IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

RUBY J. ANDERSON, for herself and as Personal Representative of the Estate of Decedent, KENNETH L. ANDERSON, Appellant, v. ASBESTOS CORP., LTD.; CATERPILLAR, INC.; CROWN CORK & SEAL COMPANY, INC.; GARLOCK SEALING TECHNOLOGIES, LLC; FOSTER-WHEELER ENERGY CORPORATION; FRASER'S BOILER SERVICE, INC.; GOULDS PUMPS (IPG), INC.; INGERSOLL-RAND COMPANY; LOCKHEED SHIPBUILDING COMPANY; METROPOLITAN LIFE INSURANCE COMPANY; SABERHAGEN HOLDINGS, INC.; TODD SHIPYARDS CORP.; and VIACOM, INC., successor by merger to CBS CORPORATION, f/k/a WESTINGHOUSE ELECTRIC CORPORATION, Respondents.	)	No. 60271-3-I DIVISION ONE UNPUBLISHED FILED: July 13, 2009

Cox, J. — On August 11, 2008, we filed our original decision in this case.[1] There, we affirmed the trial court's summary dismissal of the claims against defendants Lockheed Shipbuilding Company and Todd Shipyards Corporation. But we reversed its order in limine at trial excluding the theory of the case that

[1] Anderson v. Asbestos Corp., noted at 146 Wn. App. 1030 (2008).

Caterpillar, Inc. had a duty to warn of the dangers of using asbestos insulation with the engines it manufactured. Thereafter, the supreme court granted Caterpillar's petition for review and remanded this case to this court for reconsideration in light of its decisions in Braaten v. Saberhagen Holdings[2] and Simonetta v. Viad Corporation.[3] Accordingly, we have reconsidered our original decision and now affirm the judgment on the defense verdict at trial.

We discussed the background of this case in our original decision and will not repeat that discussion here. We do not read the supreme court's grant of Caterpillar's petition for review as affecting our ruling in favor of summary dismissal of Todd and Lockheed. Thus, our discussion is limited only to the question of the duty of Caterpillar.

DUTY TO WARN

Anderson claims the trial court incorrectly excluded any evidence regarding his theory that Caterpillar had a duty to warn about asbestos insulation used with engines it manufactured. Based on the supreme court's recent decisions, we disagree.

Both Braaten and Simonetta discuss the duty to warn in asbestos cases. In Simonetta, the defendant manufactured evaporators, which were machines used on naval ships.[4] The evaporators Joseph Simonetta serviced were

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[2] 165 Wn.2d 373, 198 P.3d 493 (2008).

[3] 165 Wn.2d 341, 197 P.3d 127 (2008).

[4] Simonetta, 165 Wn.2d at 346.

encased in asbestos insulation and Simonetta had to remove the insulation in order to repair the equipment and reinsulated it when he was finished.[5] The manufacturer did not supply the insulation.[6]

The supreme court held that a manufacturer may not be held liable in common law products liability or negligence for failure to warn of the dangers of asbestos exposure resulting from another manufacturer's insulation applied to its products after sale of the products to the navy.[7]

In Braaten, the defendants manufactured pumps and valves used on naval ships.[8] Some of the manufacturers' products originally contained packing and gaskets with asbestos in them, but the packing and gaskets were manufactured by third parties and installed in the defendants' products.[9] The navy also applied asbestos-containing insulation to the valves and pumps after they were installed on the ships.[10] In his work as a pipefitter, Braaten had to both remove and reapply asbestos insulation from pumps and valves on naval ships.[11]

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[5] Id.

[6] Id.

[7] Id. at 363.

[8] Braaten, 165 Wn.2d at 379.

[9] Id. at 380.

[10] Id. at 379.

[11] Id. at 381.

The first issue in Braaten was whether the defendants had a duty to warn of the danger of exposure during maintenance of their products to asbestos in insulation that the navy would foreseeably apply to their equipment.[12] Following Simonetta, the court held that the defendants had no duty to warn under common law products liability or negligence theories.[13]

The remaining issue in Braaten was whether the defendant-manufacturers had a duty to warn of the danger of exposure to asbestos in replacement packing and gaskets that the defendants did not manufacture, sell, or otherwise supply. The court held "that the general rule that there is no duty under common law products liability or negligence principles to warn of the danger of exposure to asbestos in other manufacturers' products applies with regard to replacement packing and gaskets."[14] The court noted, "[t]he defendants did not sell or supply the replacement packing or gaskets or otherwise place them in the stream of commerce, did not specify asbestos-containing packing and gaskets for use with their valves and pumps, and other types of materials could have been used."[15]

Here, evidence showed that Caterpillar manufactured engines used on ships on which Anderson worked. Anderson sought to pursue the theory that

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[12] Id. at 380.

[13] Id. at 380, 398.

[14] Id. at 380.

[15] Id.

Caterpillar had a duty to warn about asbestos "which [Caterpillar] did not supply but which it was aware would be used in connection with" its engines.[16] But under the supreme court's recent decisions, there is no duty under common law products liability or negligence principles to warn of the danger of exposure to asbestos in other manufacturers' products.[17] Further, "[i]t makes no difference whether the manufacturer knew its products would be used in conjunction with asbestos insulation."[18]

Here, the trial court decided that Caterpillar had no duty to warn about asbestos insulation used with the engines it manufactured. Accordingly, its ruling on the motion in limine was correct under Simonetta and Braaten. Thus, the defense verdict should stand.

We now affirm the judgment in favor of Caterpillar.

Cox, J.

WE CONCUR:

[16] Brief of Appellant at 1.

[17] Simonetta, 165 Wn.2d at 354, 363; Braaten, 165 Wn.2d at 398.

[18] Braaten, 165 Wn.2d at 385 (citing Simonetta, 165 Wn.2d at 358).